

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
\$46,000 IN UNITED STATES CURRENCY,	:	NO. 02-6805
Defendant.	:	

MEMORANDUM ORDER

AND NOW on this 7th day of March, 2005, presently before the Court is the Motion for Clarification of Memorandum Order filed January 21, 2005 filed by Miguel Martinez (“Claimant”) on February 7, 2005 (Doc. No. 37). The Order of January 21, 2005 is hereby MODIFIED as per the instructions set forth below.

The Court neglected to address several issues in its January 21, 2005 Order: (1) the litigation fees due Claimant, (2) the additional attorney’s fees due Claimant pursuant to the supplemental schedule of hours submitted by Claimant’s attorney Anne M. Dixon on December 31, 2004, and (3) the additional attorney’s fees due Claimant pursuant to the second supplemental schedule of hours submitted by Ms. Dixon on February 11, 2004. The Court writes to correct these omission and clarify its award of fees and costs to Claimant.

I. LITIGATION COSTS

Claimant originally moved for \$3,761.83 in litigation costs. Claimants’ two subsequent filings requested an additional \$57.88 in litigation costs, for a total of \$3,819.71 in litigation costs sought. See Attachments to Cl’s Mot. In the Government’s initial opposition to Claimant’s request for fees, the Government contended that the \$3,761.83 in litigation costs requested were not substantiated by invoices or bills. Pl’s. Opp’n at 25, 26. The Government has not filed any

specific opposition to the additional \$57.88 in litigation costs.

Claimant will not be reimbursed for expenditures that (1) have not been corroborated with documentation and (2) are considered part of the overhead incorporated into an attorney's fee. Following a review of Claimant's invoices and supplemental exhibits, the Court has determined that Claimant should be reimbursed for \$1,953.23 of litigation costs expended, not including compensation for expert witness fees, which was addressed in the Court's previous Order.¹ This figure includes the litigation costs claimed in both the original and supplemental schedules filed by Claimant.

II. ADDITIONAL ATTORNEY'S FEES

With respect to the supplemental schedules of attorney's fees, Claimant requests reimbursement for an additional 8.6 hours of work for the period between November 21, 2003 and December 31, 2003, as well as for an additional 7.4 hours of work for the period between January 1, 2004 and February 6, 2004. See Attachments to Cl.'s Mot.

As stated in the Court's previous Order, the Court will abide by the Third Circuit's methodology of calculating reasonable attorney's fees in civil forfeitures by multiplying the

¹ Claimant also sought reimbursement for (1) \$1,000 in travel expenditures, (2) \$65.88 in courier expenses, (3) \$9.00 in notary costs and (4) \$31.60 in photocopying expenses. See Cl.'s Application Ex A-5, Doc. No. 30. Claimant will not be compensated for the aforementioned due to a lack of corroborative documentation. Furthermore, the Government should not be made to pay Ms. Dixon for photocopies, notary seals and the like, which are considered overhead and incorporated into an attorney's rate. See Sheffer v. Experian Info. Solutions, Inc., 290 F. Supp. 2d 538, 549 (E.D. Pa. 2003) ("Since the costs of clerical work, such as filing and copying, are ordinarily considered to be part of an attorney's rate as office overhead, they will not be compensated.") see also Doe v. Ward, 282 F. Supp. 2d 323, 333-34 (W.D. Pa. 2003) (finding that clerical tasks are office overhead and therefore incorporated into attorney's rate); see also Missouri v. Jenkins, 491 U.S. 274, 285-88 (1988); Halderman v. Pennhurst State Sch. & Hosp., 49 F.3d 939, 942 (3d Cir. 1995).

reasonable time expended by a reasonable hourly rate, capped at \$125 per hour as mandated by 28 U.S.C. 2412(d)(1)(A) of the EAJA. See United States v. Eleven Vehicles, 200 F.3d 203, 206 (3d Cir. 2000). The Court will therefore apply the \$125 hourly rate with a cost of living adjustment as allowed by 28 U.S.C.A. § 2412(d)(2)(A)(ii). In its previous Order, the Court stated that the hourly fee properly adjusted for inflation under the consumer price index for urban consumers (CPI-ALL or CPI-U) was \$147.16 for 2003. The Court's calculation was in error. The hourly fee properly adjusted for inflation was \$147.72 for 2003.² The hourly fee properly adjusted for inflation is \$151.65 for 2004.³

Claimant has requested compensation for an additional 16 hours of work performed by his attorney, Ms. Dixon, between November 21, 2003 and February 6, 2004. The Government contends, in its response to Ms. Dixon's second supplemental schedule of costs and hours expended,⁴ that the total hours charged by Ms. Dixon for reviewing reported decisions on fee issues and preparing for the hearing on Claimant's motion for fees are not reasonable in light of her status as an experienced forfeiture attorney. Gov't Opp'n to Supp. Sched. Costs at 2 (Doc. No. 35). The Court has reviewed the supplemental hourly schedules submitted by Ms. Dixon

² "District courts have been determining the cost-of-living adjustment by multiplying the basic EAJA rate by the current consumer price index for urban consumers (CPI-U), and then dividing the product by the CPI-U in the month that the cap was imposed (October 1981 for pre-amendment cases, March 1996 for post-amendment cases)." Sorenson v. Mink, 239 F.3d 1140, 1148 (9th Cir. 2001). See also Harris v. Sullivan, 968 F.2d 263 (2d Cir. 1992); Hickey v. Secretary of Health & Human Servs., 923 F.2d 585 (8th Cir. 1991). The calculation for 2003, then, is the product of the \$125 EAJA rate multiplied by the annual CPI-U for 2003 (184.0) divided by the March 1996 CPI-U (155.7). Thus, $(\$125 \times 184.0)/155.7 = \147.72 .

³ The annual CPI-U for 2004 was 188.9. Thus, $(\$125 \times 188.9)/155.7 = \151.65 .

⁴ There is no response from the Government to Ms. Dixon's first supplemental schedule of costs and hours expended on record.

and finds the categories of work performed to be compensable and the amount of time spent performing that work to be reasonable. As such, Claimant shall be reimbursed for the full 16 additional hours of work performed by Ms. Dixon. As discussed above, the 8.6 hours of work performed in 2003 will be reimbursed at an hourly rate of \$147.72, for a total of \$1,270.39 in attorney's fees. The 7.4 hours of work performed in 2004 will be reimbursed at an hourly rate of \$151.65, for a total of \$1,122.24 in attorney's fees. The total amount of fees to be paid for the 16 hours of work submitted in Claimant's supplemental schedules is therefore \$2,392.63.

III. CONCLUSION

ACCORDINGLY, the Court's Order of January 21, 2005 is clarified as follows:

- 1) Claimant is due \$1,953.23 in litigation costs, exclusive of expert witness fees.
- 2) Claimant is due an additional \$2,392.63 in attorney's fees.
- 3) The Court's previous Order was in error when it stated that the applicable hourly rate for 2003 was \$147.16. The appropriate hourly rate is \$147.72. When applied, Claimant is therefore due an additional \$71.46 in attorney's fees beyond the amount articulated in the previous Order.⁵ Because the experts were compensated at the same rate attorney's fees were granted, Claimant is due a total of \$288.05 in expert fees, rather than a total of \$281.19 as stated in the previous Order.⁶

To be clear, the total amount due Plaintiff under this Order and the Order of January 21, 2005 is

⁵ This number is the product of the hourly rate multiplied by the 124.5 hours of Ms. Dixon's 2003 work approved by the Court and the 3.1 hours of Mr. Wittles's 2003 work approved by the Court in the previous Order less the amount of attorney's fees granted in the previous order for 2003.

⁶ This number is the product of the hourly rate multiplied by the .25 hours expended by Mr. Comisky and the 1.7 hours expended by Mr. Smith.

as follows. Claimant is due a total of **\$25,848.70** in attorney's fees: (1) \$23,384.62 in attorney's fees as calculated in the January 21, 2005 Order; (2) an additional \$2,392.63 in attorney's fees for the work described in Claimant's supplemental schedules; and (3) an additional \$71.46 to adjust for the Court's miscalculation of the applicable 2003 hourly rate. Claimant is due **\$1,953.23** in litigation costs and **\$288.05** in expert witness fees. Claimant is therefore due **a total of \$28,089.98** in attorney's fees and costs.

BY THE COURT:

/s/
Legrome D. Davis, J.